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## THE JEWS AND THE ENGLISH LAW.

## VI.

WE must now turn from the pursuit of theories which, however interesting, are either insufficiently supported by evidence or demonstrably false, and attempt to sum up what Cromwell actually did. It is clear that at one time he had been inclined to concede some legal protection to the Jews, and had accorded Menasseh both sympathy and encouragement; but the popular storm which the public discussion of the proposals had raised convinced him of the folly of trying to carry into actual operation any plan that he may have formed. Accordingly, after the Conference he never made any such attempt, and actually expressed himself as opposed to the resettlement of the Jews. "I had almost forgot," writes Colonel Whitley from Calais to Sir Edward Nicholas on Jan.  $\frac{1}{2}\frac{4}{8}$ , 165 $\frac{5}{8}$ , the month after the Conference had broken up, "that Cromwell says it is an ungodly thing to introduce the Jews; but, if he refuse them, it is because they refuse to purchase it at the sum desired unless they may have the authority of a parliament for their being there with safety<sup>1</sup>." The finances of the Commonwealth were at this time at a low ebb, and the Royalist newswriter, in repeating the statement made by Cromwell, cannot help, having regard to his previous conduct, reflecting that it was not sincere, and that privileges might yet be granted if the Jews were willing to pay a sufficiently heavy price for them. But such privileges could only have been validly granted by legislation,

<sup>1</sup> *The Nicholas Papers*, vol. III, p. 255.

and the Jews, with that prudent caution which they are credited with generally displaying in money matters, very wisely refused to pay for a boon which could only be securely granted under the guarantee of an Act of Parliament, when the Protector had not the courage to introduce a bill which, even if backed by his great influence, would have stood little chance of ever becoming law. At any rate, Cromwell did nothing, and the position of the Jews remained throughout his régime the same as it had been in the time of Charles I. They were liable to severe penalties if they did not attend an authorized, that is, a Christian, place of worship, and they were precluded from holding any Jewish religious service. Jewish rites may, indeed, have been privately practised, but it is evident that the strictest secrecy was observed. It is true that there were still Jews in England, as there had been in the time of the late king, but they outwardly conformed to the laws of the land, or at any rate they were careful to commit no open or flagrant breach of them. Some few of them had rendered the Protector services, especially in his expeditions to the Indies and his war with Spain, so that their presence here was well known to him. As the law then stood he might have ordered their withdrawal, but so long as they created no trouble or disturbance he was willing that they should remain. As Mr. Carteret Webb, writing it is true nearly a century after the events, but at the same time entrusted by the oldest Jewish community in London with the advocacy of their cause, and having knowledge of the traditions of the English Jews and access to all their documents, says, "Nothing more was done by Cromwell than the conniving at Alvaro da Costa and five other Jew families living in England<sup>1</sup>." This statement of comparatively late date is amply corroborated by *The case of the Jews stated*, which was drawn up in opposition to the very serious attempt to levy a special tax upon the Jews, shortly after the deposition of James II, the

<sup>1</sup> The question whether, &c., p. 36.

opening words of which it will not be out of place to cite here:—"That about the Year 1654 there came Six Jew Families into this Kingdom, which have (since King Charles the Second's Restauration) been increased to the Number of between Three and Fourscore Families."

To this then all the statements about Cromwell's protection of the Jews amount, that he knowingly allowed some half-dozen families to remain in the country, even utilizing their services for the purpose of carrying out his political aims. The only favour granted was that he did not, as head of the executive, put in force the power at that time claimed by the executive of expelling foreigners<sup>1</sup> who might choose to come and reside here. If this can be called a resettlement he may be said to have connived at it, but if a resettlement implies, as it is in common parlance supposed to imply, the creation of some communal organization, the foundation of a synagogue, and the open worship of God according to Jewish rites, there is no reliable evidence that Cromwell ever encouraged, or even connived at, or permitted it. If he had, as is sometimes suggested, granted the Jews a charter or other document conferring special privileges upon them in respect of their religion; the charter would have been absolutely void even during the Protector's lifetime, and certainly could have been of no avail after his death. For Cromwell was a constitutional monarch; his powers, especially in religious matters, were strictly defined and circumscribed by written constitutions, the Instrument of Government from December 16, 1653, to May 25, 1657, the Humble Petition and Advice from the latter date till the day of his death. Neither of these permitted any sort of toleration or religious liberty to be

<sup>1</sup> Subject no doubt to the provisions of clause 30 of Magna Charta. It is said that the last time when the right was exercised on a large scale was by Elizabeth in 1575, but it was claimed by the Crown till the Revolution (see the argument of Sir Robert Sawyer, Attorney-General, in the *East India Company v. Sandys*, and Howell's *State Trials*, 457 sqq.), and there is some doubt whether it is even now abolished (see *Musgrove v. Chun Teeong Toy*, L. R. [1891], A. C. 272).

extended to any persons professing doctrines contrary to Christianity, and the Protector had no power under either to alter or interfere with the religious settlement thereby established. Therefore even assuming—and the assumption must be made not only without any evidence, but in contradiction to all the known facts—that a charter of some kind was given, but has been accidentally lost or purposely destroyed, from a legal and historical point of view the Jews could not be said to owe their re-establishment to Cromwell, not merely because he was a usurper, and in consequence all his acts, unless confirmed by a subsequent sovereign, were void, but because he had never at any time arrogated to himself the right of introducing any strange religion, or mitigating the law in favour of its adherents.

This was the situation of the Jews in the early days of September, 1658; it was almost precisely the same as it had been ten years before, save that the hopes which were then formed had been disappointed, and succour was no longer expected from the statesman whose tolerant words, however sincerely spoken, had not been followed by any measure of relief. And thus it was that the news that “the powerful devil is dead,” brought hope and comfort to the Jews, both here and abroad, as well as to the exiled monarch. Even before Menasseh’s mission the assistance of the important congregation of Amsterdam had been sought by the Royalists, as is made manifest by the following extract from a letter of Sir Marmaduke Langdale to Sir Edward Nicholas, the Secretary of State of the fugitive king, written at Brussels on September 20, 1655: “For that clause of Mr. Overton’s letter which mentions the Jews, it proceeded from some discourses I had with Mr. Brokes [Saxby] about them, who seemed much to favour them as necessary to a kingdom, and I believe their tenets do not much differ. I desired Mr. Overton to sound their intentions by some of his party in Holland. I am very sorry they agree with Cromwell. The Jews are

considerable all the world over, and the great masters of money. If his Majesty could either have them or divert them from Cromwell, it were a very good service. I heard of this three years ago, but hoped the Jews that understand the interest of all the princes in the world, had been too wise to adventure themselves and estates under Cromwell, where they may by his death or other alteration in that kingdom run the hazard of an absolute ruin: but they hate monarchy and are angry for the patent that was granted by King James to my Lord of Suffolk for the discovery of them, which made most of the ablest of them fly out of England <sup>1</sup>."

At this time the hopes of the Jews centred in Cromwell's

<sup>1</sup> *The Nicholas Papers*, vol. III, p. 51. It is evident that the Jews of the Low Countries had at this time great expectations from Cromwell's readiness to receive Menasseh's mission, preparations for which were far advanced. The letter here referred to was enclosed in the dispatch recited in the text, and was dated Delf, 13 Sept. 55, by Richard Overton to Sir Marm. Langdale. The material passage is: "I made inquiry into the condition of the Jewes, soe farr as was necessary. I find they are in conjunction with Cromwell; some of their Rabbies are learning English on purpose to live in England and must go speedily over. They have their meetings at London, and those Rabbies are to be sent thither for y<sup>t</sup> purpose, soe y<sup>t</sup> I am very glad I dealt with them by proxe; not one of them knowes anything of me or what my intentions were. Had they, Cromwell should have known it."—*The Nicholas Papers*, vol. III, p. 44. The reference to the patent granted by King James to my Lord of Suffolk is not very clear. Thomas Howard was created Earl of Suffolk on July 21, 1603, at which time he was Lord Chamberlain of the Royal Household; on July 11, 1614, he was appointed Lord High Treasurer, but in the autumn of 1618 he was accused of extortion and dismissed. I have been unable to find any patent or commission directed against the Jews alone, but on September 5, 1604, the Earl of Suffolk was appointed one of several commissioners for the execution of the laws against Jesuits, seminary priests, or other religious persons "being corrupted and brought up seditiously beyond the seas or elsewhere," and authorizing their banishment; and on June 23, 1618, he was appointed a member of a similar commission (see *Calendar of State Papers, Domestic*, 1603-10, p. 148, and id. 1611-18, p. 547. The first commission is printed at length in Rymer's *Foedera*, vol. XVI, p. 597). It is probably one of these commissions that is referred to. In any case the passage corroborates the view expressed in the preceding article that the unbroken residence of Jews in England dates from the first years of Charles I and not earlier.

professions of universal toleration, and had been raised to fever heat by the invitation extended to Menasseh and his followers. But these hopes were destined to bitter disappointment. Before the year had ended, the Conference had been held, but nothing had come of it; the humble petition presented in the following spring remained unanswered, and though Menasseh still stayed in England his companions had departed to their homes abroad, despairing of success. And so the Jews in Holland now turned to the exiled Charles, peradventure they might obtain from him, in the event of his ever being restored to his kingdom, the boon which had been refused them by the all-powerful Protector. Little more than a year after they had been found so unapproachable by Sir Marmaduke Langdale and Mr. Overton, the failure of Menasseh's mission having occurred in the interval, the negotiations between the Jews and the king were complete, as may be seen from the copy of a commission of King Charles II, dated September 24, 1656, at the Court at Bruges, addressed to Lieutenant-General Middleton, to treat with the Jews of Amsterdam: "That whereas the Lieutenant-General had represented to his Majesty their good affection, and that they had assured the Lieutenant-General, that the application which had been lately made to Cromwell on their behalf by some persons of their Nation, had been and was absolutely without their consent, the Lieutenant-General is impower'd to treat with them, that if in that conjunction they shall be ready to assist by any contribution of money, arms, or ammunition; they shall find when God shall restore his Majesty, that he would extend that protection to them, which they could reasonably expect, and abate that rigour of the Law, which was against them in his several Dominions, and repay them<sup>1</sup>." Charles was at this time in Flanders, contem-

<sup>1</sup> *Brit. Mus. Add. MSS.* 4,106, fol. 253. This paper, says Dean Tucker, was found among the original papers of Sir Edward Nicholas, Secretary of State to Kings Charles I and II, and was communicated to him by a friend. Second letter to a friend concerning Naturalization, p. 29, published in 1753.

plating an expedition against England with the assistance of Spain, and being almost penniless the financial assistance that might be obtained from the Jews was of considerable importance to him. Such assistance he received, and he afterwards, as will be seen, scrupulously carried out the pledge, on the faith of which it had been rendered. But for the time being the prospect for resettlement was not a bright one. Charles was not ready to start until early in 1658, but on March 1 of that year English frigates destroyed his ships at Ostend, and after the battle of the Dunes on June 8, all hope of help from Spain was gone, and the expedition had to be abandoned. The restoration of the king, and the fulfilment of his promise to the Jews, which depended upon it, seemed hopeless, when the news of Cromwell's death, less than three months later, made the first of these events almost certain, though a period of more than a year and a half was to elapse before the king came to his own again.

In this interval no great change can be proved to have taken place in the condition of the Jews here, but the reins of government had become slacker, and the laws of intolerance, though unaltered, were less uniformly enforced. Moreover, as time went on, it became more and more certain that the monarchy would be restored, and the king's promise of protection, as well as his well-known tolerant views in matters of religion, filled with encouragement those who were here, and induced others to join them. Some of them, it is plain, did not think the situation sufficiently secure to bring over their wives and families with them, for the Petition to the King in Council, presented some six months after the Restoration by the Lord Mayor and Aldermen of the City of London, complains of the competition in the export trade of strangers, "both Christians and Jewes, who live here obscurely, free from family expences and charge of Public offices." The same petition also indicates their growing numbers by comparing them to a swarm of locusts "Who are *now daily* multiplied



by the accession of whole families of them from all parts (as if your Majesty's dominions were condemned to be the sink into which the sewer of Mankind should be emptied for a plague to your subjects)<sup>1</sup>." The other petitions presented at the same time also testify to this increase in the numbers of the Jews.

There is moreover some, though it must be admitted weak, evidence that a synagogue was established at this time. It was of course a secret, and in no sense a public building. The authority for this statement is a scurrilous pamphlet, entitled *The Great Trappaner of England Discovered*, written for the purpose of vilifying one Thomas Violet, a goldsmith and Alderman of the City of London, who at this time was taking a leading part in opposing a Jewish resettlement. The tract was apparently written in March, 1658, and, in spite of its violent and exaggerated language, has been thought worthy of preservation among the public records. The anonymous writer describes an attempt by Violet to ruin all the Jews and procure their banishment and the confiscation of their property, half of which was to be distributed among the conspirators as their reward, by means of a plot, the object of which seems to have been to hand over a quantity of spurious foreign coins to the Jews, and then charge them with coining or procuring these counterfeit pieces. The writer says that when he discovered Violet's designs he melted down the coins again, and so the plot came to nothing. It is only incidentally that the synagogue is mentioned. The commencement of the plot is described as follows: "This Deponent saith that in the beginning of last Spring" (apparently the spring of 1659), "Tho. Violet Goldsmith came to this Deponent, and told him this Deponent, that the said Thomas Violet knew of a way that might make him the said Deponent for ever, and so desired the said Deponent to go along with him, the said Tho. Violet, into Duke's Place, whereupon the said Deponent went along with the said Tho. Violet into the

<sup>1</sup> *Remembrancia*, vol. IX, p. 44.

place before mentioned, and was by him the said Tho. Violet brought *into the Synagogue of the Jewes, in the place aforesaid*, and spake with one Mr. Moses their High-priest that year and other Jewes; and this Deponent saith further, that the said Tho. Violet told the Jewes, this deponent was a fit man to do them service in the business which he the said Tho. Violet had treated with them about<sup>1</sup>."

This is the first mention in contemporary literature of a visit to a Jewish synagogue in England, and, notwithstanding the mention of the High-priest, it is not quite certain that the writer means a place of public worship; for on this occasion at least it was made use of as a place for transacting business, in which the High-priest, who is spoken of as an annually elected officer, is mentioned as having taken a prominent part, the word may be used in its etymological sense as a meeting-place, or, as is more probable, the whole story may be a fabrication on the part of the anonymous pamphleteer. In any case, it is to be observed that the building, which was so far unknown that Violet had to personally conduct his intended accomplice thither, is said to have been situated in Duke's Place, and not in King Street or Creechurch Lane, the traditional sites of the first synagogues. If used as a place of worship as well as business such user was wholly illegal and strictly secret, so that in the only one of the petitions presented against the Jews in the autumn of 1660, which has been thought worthy of preservation among the State Archives and which contains the most sweeping and, in many cases, unfounded accusations against the Jews, the establishment of a synagogue is only hinted at, but not directly asserted, in the following words: "And moreover such of late hath been the presumption of the Jewes that as the Report hath gone and so doubtless upon inquiry it will be discovered that they have circumcised children, set up and frequented Synagogues and have had and still may have their Schools, Priests, Presbiters, and the like." Violet,

<sup>1</sup> *The Great Trappaner of England Discovered*, p. 3.

in his petition, dated December 18, 1660, says that at the time of the Conference with Menasseh the Jews prayed "to have liberty to erect new Synagogues or Temples amongst us for the free public exercise of their Jewish worship, Customs, and Religion; and they did *then* erect a Jewish Synagogue and it is at this day, every day they celebrate twice in the day their superstition, their fire never goes out all the year<sup>1</sup>." We know however that this last statement is untrue, for otherwise there would have been no object in the Jews petitioning in the spring of 1656 for protection for meeting at their private devotions in their own houses. Nor did Violet himself, an avowed and bitter enemy of the Jews, take any step in the matter until about Christmas, 1659, when he made an application to Mr. Justice Tyril, with the intention of obtaining criminal process against them, a fact which indicates that he could not earlier obtain any evidence of their having set up a synagogue, and so rendered themselves amenable to the criminal law.

There is evidence then that in the year and a half which

<sup>1</sup> Violet's Petition, December 18, 1660, p. 1. The previous quotation is from the Remonstrance concerning the Jews, November, 1660, *S. P. Dom.* Car. II, vol. XXI, p. 140. Mr. Wolf, in his *Jewry of the Reformation*, p. 8, note 26, intimates that this latter document is the petition actually presented by Violet to the King in Council. This is not probable; it is more likely to be the petition of Sir William Courtney and others, or one of the other petitions mentioned as being before the Privy Council on November 30, 1660 (see *Privy Council Register*, Car. II, vol. II, p. 57). If it is Violet's original petition, he does not go so far as to say that a synagogue has been actually set up, as he does in his second petition, dated December 18, 1660, and published in pamphlet form in January, 1661. Inasmuch as the debate in the Commons was ordered to take place on December 18, it is probable that this petition was never actually presented, so that it is only a political pamphlet, issued shortly after the proceedings referred to had been dropped, and accordingly little reliance can be placed on the statements of fact it contains.

Mr. Moses, the High-priest, is no doubt correctly identified by Mr. Wolf as Moses Athias, described in the Da Costa lists as "Sin. Moses Atees, Creechurch Laine, a Jewish Ribay, and Sin. Moses the Prest wer the Sinagoge is." Dr. Gaster, in his *History of the Spanish and Portuguese Synagogue* (p. 18), says that he must have acted as the temporary Hazan, and also as a kind of spiritual adviser.

succeeded Cromwell's death the numbers of the Jews increased, and their position and prospects improved so far that they ventured to hold divine service, probably in a private house, but certainly unknown to the general public or the authorities, and conducted with the strictest precautions and concealment. They may have done this also in the old days when Charles I was king, or in the more recent times of Oliver's Protectorate; but if they did they managed to leave no trace to attract the attention either of contemporary informers or subsequent historians. It is, moreover, certain that whatever hopes may have been aroused and whatever laxity there may have been in administering the law in this interval, no change was effected in the legal status of the Jews.

On Royal Oak Day, May 29, 1660, Charles II made his triumphal entry into London, amidst the plaudits and acclamations of the citizens. Thenceforward all the acts of the late Government, unless expressly confirmed by Parliament, and all the statutes or ordinances enacted during the time of the Interregnum, were absolutely void. Thus the religious settlement effected by Cromwell was at an end, and the situation as it existed at the period before the great rebellion was revived. When Charles was firmly seated on his throne, the previous legislation against sectarianism and nonconformity, intolerant as it was, did not satisfy the bigotry of the triumphant Cavaliers, who, having themselves experienced the evils of persecution, were determined to take vengeance on their former oppressors. The history of the reign accordingly reveals a series of measures directed against all who dissented from the tenets of the established church, and it is somewhat remarkable that at the very time when these measures were being enacted and enforced the Jews obtained a permanent and legal settlement in the country. If they had a settlement before this time, it was so successfully hidden as to escape the attention of the authorities, and to baffle the keen eyes of the informers, always ready to

swoop down upon their prey. Now, for the first time, Jews openly defied the acts against recusants by habitually neglecting to attend any Christian places of worship; now, for the first time, they organized a community, and established a synagogue where Jewish services were publicly held, notwithstanding the severe penalties to which those who took part in them were by the laws exposed. To explain this strange phenomenon it will be necessary to review briefly the general religious history of the reign, and then examine the occasions on which the still small Jewish community was brought into contact with the governing powers. The king himself was of a tolerant disposition, and again and again combatted the zeal for persecution of his Parliament, though in these contests he was often worsted, thanks to his prevailing vices of self-indulgence and indolence. At this time, as has already been pointed out, toleration did not rank high in the scale of virtues, but there can be little doubt that this was one of the few virtues (if we adopt the popular view of his character) which Charles possessed. In his early days he had had experience of the bigotry of the Presbyterians, when he was nominally a king, though really a prisoner, in Scotland, a situation from which his defeat at Worcester, despite the poverty and exile it brought in its train, came as a relief. His mother was a Roman Catholic, and he married a Roman Catholic wife. His own religious convictions were not very strong; during his exile he remained a staunch adherent to the Church of England, and even quarrelled with his mother on account of her attempt to convert his brother the young Duke of Gloucester to Catholicism; but his conduct at this time may have been actuated by policy rather than by conviction. His leanings in later life were certainly towards the ceremonies of the Roman Church, though he put off his formal conversion to it till his death-bed. To him religion was of such little importance that it was absurd to punish any one on its account. He accordingly showed himself a real advocate

of toleration; but when the cry for persecution became too pressing, the desire for ease which prompted all his actions made him yield to it, even as Cromwell, for all his firmness of will, had ultimately given way. This tolerant disposition has already been seen in the grant of the commission to General Middleton in September, 1656, previously mentioned. The promise of protection to the Jews contained in it was only an extension of the terms of the Treaty made with Spain in the spring of the same year, as the price of her assistance for his restoration, by which he agreed to suspend and, if possible, secure the parliamentary revocation of all penal laws. In the same spirit in the Declaration of Breda, issued at the time of his restoration, he says: "And because the passion and uncharitableness of the times have produced several opinions in Religion, by which men are engaged in parties and animosities against each other (which when they shall hereafter unite in a freedom of convocation, will be composed, or better understood), we do declare a Liberty to tender consciences, and that no man shall be disquieted or called in question for differences of opinion in matter of Religion, which do not disturb the peace of the kingdom; and we shall be ready to consent to such an Act of Parliament, as, upon mature deliberation, shall be offered to us, for the full granting that indulgence."

The Convention Parliament, by which Charles had been re-called, did not pass any legislation on the subject of religion. The House of Commons contained many supporters of the old régime, who preferred the Presbyterian Church government established under the Commonwealth to the Church of England as formerly established, and when the question came up for discussion in the House, the king was requested to convene a select number of divines to treat concerning the affair. As a result of the conference a Declaration concerning ecclesiastical affairs was issued. It provided modifications in Church government which were a compromise between the views of the

Episcopalians and the Puritans, and further renewed the promise of toleration contained in the Declaration of Breda, in the self same terms<sup>1</sup>. The Declaration was presented to Parliament. The House of Commons thanked the king for it, and a bill embodying it and turning it into law was presented and read a first time; but the toleration was thought too wide, and the bill rejected on the second reading by 183 to 157 votes<sup>2</sup>.

At the end of the year the Parliament was dissolved, and in the spring of the following year the elections for the new House of Commons were held. A wave of loyalty, such as has been seldom experienced, swept over the country. The Cavaliers were everywhere successful; the Puritans everywhere defeated, and when Charles met his Parliament in May, he was confronted by a House of Commons which might truly be called "plus royalist que le roi." "The divine right of kings," "Church and State," were the mottoes and watchwords of the newly-elected representatives of the people. The Church was to be purged of all dissenting elements, and life in the State to be made endurable only to those who owned allegiance to the doctrines of the national Church. Accordingly, the first thing done by the House of Commons, after the election of Sir Edward Turner as their Speaker, was to order all the members to take the Sacrament according to the old Liturgy, on pain of expulsion, and then, in conjunction with the Lords, to order that "The solemn League and Covenant" should be burned by the common hangman at Westminster and in the City, and that all copies thereof be taken down out of all churches, chapels, and all other public places in the kingdom. Moreover, the first law that it added to the statute-

<sup>1</sup> Baxter, the leading Puritan divine, desired to exclude from the general toleration those who denied the Trinity and Papists, as had been done in Cromwell's time by both the Instrument of Government and the humble Petition and Advice, but the king, mindful of his promises, published the Declaration without this restrictive clause.

<sup>2</sup> See Cobbett's *Parliamentary History*, vol. IV, pp. 79, 82, 131-42, 152-4.

book, was "an Act for the well-governing and regulating of Corporations," commonly called the Corporation Act, by which no one was eligible to hold any corporate office or be a member of any municipal corporation who should not, in addition to taking certain oaths and making certain declarations set out in the Act, "have within one year next before his election taken the Sacrament of the Lord's Supper according to the rites of the Church of England<sup>1</sup>." Thus all Nonconformists, of whatsoever creed or sect, were placed under a political disability, which was not removed till the year 1828. This was immediately followed by an Act restoring the bishops to their seats in the Upper House. The next measure passed this session to which attention must be directed was the Quakers' Act, the passage of which was delayed in the Lords, who "had not stomachs strong enough to digest quite so fast as the Commons furnished them with this sort of food." The objection of the Lords had been that the penalties of the bill extended to others besides Quakers, but after a conference between the Houses the bill was passed. It made penal a refusal to take an oath when lawfully tendered, or maintaining that the taking of oaths was unlawful, and also "if the said persons commonly called Quakers shall at any time depart from the places of their several habitations and assemble themselves to the number of five or more of the age of sixteen years or upwards at any one time in any place under pretence of joining in a religious worship not authorized by the laws of this realm." The penalties were five pounds for the first and ten pounds for the second offence, and any one found guilty after two previous convictions, was to abjure the realm, or otherwise be transported to any of the plantations beyond the seas. This Act was not repealed until 1812, after having been on the statute-book more than a century and a half. It may

<sup>1</sup> 13 Car. II, stat. 2, cap. 1, in force till 1828, when it was virtually repealed by 9 Geo. IV, cap. 17, and finally repealed by 34 & 35 Vict., cap. 48 (the Promissory Oaths Act, 1871).



be remarked that it was fortunate for the Jews that their name was not coupled with the Quakers, as it has been in several subsequent Acts of the legislature<sup>1</sup>.

The other Act of this session that it is necessary to mention is the Act of Uniformity (13 & 14 Car. II, cap. 4), which ordained the exclusive use of the newly-revised Prayer-book in all places of public worship, and rendered incapable of holding any benefice all who had not been episcopally ordained. Moreover, all professors, tutors of colleges, and schoolmasters keeping any public or private school, were required to subscribe a declaration, which included a promise to "conform to the Liturgy of the Church of England, as it is now by law established," and schoolmasters or tutors in private houses, though not compelled to sign this declaration, had to obtain a licence from the bishop of the diocese before exercising their calling, under pain of suffering three months imprisonment, "without bail or mainprize," for each offence. It is to be noted that these last provisions, though allowed to become obsolete, were not repealed till the year 1846.

The Act of Uniformity came into force on St. Bartholomew's Day (Aug. 24), 1662. Its effect was not only to drive more than 3,000 ministers from their livings, but also, as the earlier legislation punishing non-attendance at church was now revived, to expose Dissenters of every description to severe pains and penalties. In order to prevent the execution of these cruel laws, the king, on December 20, issued "a declaration to all his loving subjects," in which, among other things, he repels the charge of not performing the promises of toleration made at Breda, as to which he says: "We remember well the confirmations of them since upon several occasions in parliament; and as all these things are still fresh in our memory, so are we still firm in the resolution of performing them to the full. But it must not be wondered at,

<sup>1</sup> The Act is 13 & 14 Car. II, cap. 1, the repealing Act 52 Geo. III, cap. 155. See Cobbett's *Parl. Hist.*, vol. IV, p. 233.

since that parliament to which those promises were made in relation to an Act, never thought fit to offer us any to that purpose, and being so zealous as we are (and by the grace of God shall ever be) for the maintenance of the true Protestant religion, finding it so shaken (not to say overthrown) as we did, we should give its establishment the precedency before matters of indulgence to dissenters from it. But that once done (as we hope it is sufficiently by the Bill of Uniformity) we are glad to lay hold on this occasion to renew unto all our subjects concerned in those promises of indulgence by a true tenderness of conscience, this assurance:—

“That as in the first place we have been zealous to settle the uniformity of the Church of England, in discipline, ceremony, and government, and shall constantly maintain it;

“So as for what concerns the penalties upon those who (living peaceable) do not conform thereunto through scruple and tenderness of misguided conscience; but modestly and without scandal perform their devotions in their own way, we shall make it our special care so far forth as in us lies, without invading the freedom of parliament, to incline their wisdom at this next approaching sessions, to concur with us in the making some such act for that purpose, as may enable us to exercise with a more universal satisfaction, that power of dispensing which we conceive to be inherent in us<sup>1</sup>.”

In the face of this declaration we are not surprised to find that the penal laws were not strictly enforced, and that in particular cases, in which the declaration itself was not considered a general dispensation, the power of dispensing conceived to be inherent in the Crown was liberally exercised. Among the Cavaliers the declaration was unpopular, partly because toleration was disliked, but especially because it was thought that undue favour was shown to the Papists. The king referred to this matter in his speech

<sup>1</sup> The whole Declaration is printed in Cardwell's *Documentary Annals of the Church of England*, vol. II, pp. 311-20.

on opening the session of Parliament in February, 1663, as follows: "The truth is, I am in my nature an enemy to all severity for Religion and Conscience, how mistaken soever it be. I hope I shall not need to warn any here not to infer from thence that I mean to favour Popery. . . . I am far from meaning a toleration or qualifying them to hold any offices or places of trust in the government; nay further, I desire some laws may be made, to hinder the growth and progress of their doctrine; . . . and yet, if the Dissenters will demean themselves peaceably and modestly under the government, I could heartily wish I had such a power of indulgence, to use upon occasions, as might not needlessly force them out of the kingdom, or staying here, give them cause to conspire against the peace of it." The Commons, in their address to the king in answer, respectfully but firmly rejected all idea of indulgence to Dissenters of any kind, offering it to his Majesty's great wisdom "that it is in no sort advisable that there be any indulgence to such persons, who presume to dissent from the Act of Uniformity and Religion established." They also added that the promise of toleration made in the Declaration from Breda was no longer binding, inasmuch as it was expressly a promise of legislation which the Parliament, elected by the free choice of the nation, was unwilling to pass. During the session no further Act against Nonconformists was passed, but at the prorogation in July, the Speaker, on behalf of the House of Commons, thought fit to apologize to the king, and at the same time besought him "to issue out your Proclamation for the putting those laws which now are in force against the Popish Recusants, Sectaries, and Nonconformists in effectual execution<sup>1</sup>." The king made a conciliatory reply to his faithful Commons, but it does not appear that the desired proclamation was ever issued. The rancour of the Church was not to be baulked, and accordingly, at the next session (March 16—May 17, 1664), though the subject was not broached in the

<sup>1</sup> Cobbett's *Parl. Hist.*, vol. IV, pp. 200, 263, 286, 289.

king's speech, the first Conventicle Act (16 Car. II, cap. 4) was passed. It recites that the Statute 35 Eliz., cap. 1, has not recently been enforced, and declares it to be still in force, and further enacts that all persons above the age of sixteen years attending a Conventicle, i. e. any meeting "under colour or pretence of any exercise of religion in other manner than is allowed by the Liturgy or practise of the Church of England at which there shall be five persons or more assembled together over and above those of the same Household," are guilty of a crime, and liable to three months' imprisonment, or, in the alternative, a fine of five pounds for the first offence, to six months' imprisonment or a fine of ten pounds for the second, and transportation for seven years or a fine of £100 for the third or any subsequent offence, and in the last case only was it necessary that the conviction should take place before a jury. Persons transported, who escaped or returned without leave, were declared guilty of felony without benefit of clergy. The Act was only temporary, being limited to a period or rather more than three years, but, as we shall see, it was re-enacted, though with milder penalties, shortly after its expiration. In his speech at the prorogation the Speaker explains the Act and the reason for passing it, though no recommendation on the subject had been made in the king's speech at the opening of the session, in these words: "Whilst we were intent on these weighty affairs, we were often interrupted by petitions and letters and motions representing the unsettled condition of some countries by reason of Fanatics, Sectaries, and Nonconformists. They differ in their shapes and species, and accordingly are more or less dangerous; but in this they all agree, they are no friends to the established government either in Church or State; and if the old rule hold true, '*Qui Ecclesiae contradicit non est pacificus*,' we have good reason to prevent their growth and punish their practise. To this purpose we have prepared a Bill against their frequenting of Conventicles, the seed-plots and nurseries of their opinions, under

pretence of religious worship. The first offence we have made punishable only with a small fine of 5*l.* or three months imprisonment, and 10*l.* for a peer. The second offence with 10*l.* or six months imprisonment, and 20*l.* for a peer. But for a third offence, after a trial by a jury at the general quarter sessions or assizes, and the trial of a peer by his peers, the party convicted shall be transported to some of your majesty's foreign plantations, unless he redeem himself by laying down 100*l.*: 'Immedicabile vulnus ense recidendum, ne pars sincera trahatur<sup>1</sup>.'"

In the following session a Bill to enable the granting of Indulgences for Liberty of Conscience was introduced into the House of Lords with the approbation of the king under the auspices of Ashley and Arlington, but without the support of the other ministers. It was opposed by Clarendon, and "In the end very few having spoken for it, though there were many who would have consented to it, besides the Catholic lords, it was agreed that there should be no question put for the commitment; which was the most civil way of rejecting it<sup>2</sup>."

The legislation of persecution was not yet complete. In the following year, 1665, by the Parliament which met at Oxford because the plague was still raging in London, the Five Mile Act (17 Car. II, c. 2) was passed which forbade under a penalty of forty pounds and six months' imprisonment any nonconforming teacher or minister of whatsoever denomination from dwelling or coming within five miles of any city or corporate town without subscribing a declaration of non-resistance, and taking the oath laid down in the Act.

No further legislation was enacted till the year 1670; the execution of the laws already passed would have satisfied the Church party; attention was, moreover, absorbed in foreign affairs and the war with Holland; but, on the other hand, the fall of Clarendon had made the cause of

<sup>1</sup> Cobbett's *Parl. Hist.*, vol. IV, p. 294.

<sup>2</sup> Cobbett's *Parl. Hist.*, vol. IV, pp. 311-15, taken from Clarendon's *Life*.

toleration more hopeful<sup>1</sup>. On March 1, 1668, by the prorogation of Parliament the Conventicle Act according to the provisions of its last section expired. The Commons, however, made a determined effort to continue it, and a Bill for that purpose was introduced and passed by 144 to 78 votes, but it never went further than the Lower House<sup>2</sup>. However, during a later session, on April 11, 1670, Charles, as the price of obtaining supplies which would not be granted on any other terms, gave his consent to the second Conventicle Act (22 Car. II, c. 1, repealed in 1812 by 55 Geo. III, c. 155): by it Conventicles, defined as in the former Act, were made illegal, and all persons attending them made liable to a fine of five shillings for the first and ten shillings for the second offence. All persons preaching or teaching at such meetings were to be fined twenty pounds for the first and forty pounds for the second offence, and every person in whose house or barn such a meeting was held was to forfeit twenty pounds, and if he was unable to pay this sum, then it was to be levied on the persons present at the Conventicle. Moreover, constables and others neglecting to give information of offences committed under the Act, and magistrates omitting to enforce its execution, were made liable to penalties of five pounds and one hundred pounds respectively; half of which sums was to go to the informer. All clauses of the Act, contrary to the recognized principles of our criminal law, were to be construed "most largely and beneficially for the suppressing of Conventicles and for the Justification and Encouragement of all Persons to be employed in the Execu-

<sup>1</sup> In his speech on opening the session on February 10, 1667, the king again recommended toleration: "And for the setting a firm Peace, as well at home as abroad, one thing more I hold myself obliged to recommend to you at this present, which is, That you would seriously think of some course to beget a better union and composure in the minds of my Protestant Subjects in matters of Religion; whereby they may be induced not only to submit quietly to the government but also cheerfully give their assistance to the support of it."—Cobbett's *Parl. Hist.*, vol. IV, p. 404.

<sup>2</sup> Cobbett's *Parl. Hist.*, vol. IV, pp. 421-2.

tion thereof." The Lords, however, appended a proviso, which was ultimately agreed to by the Lower House, "That neither this Act, nor anything therein contained, shall extend to invalidate or avoid his Majesty's Supremacy in Ecclesiastical Affairs; but that his Majesty and his Heirs and Successors may from Time to Time, and at all Times hereafter, exercise and enjoy all Powers and Authority in Ecclesiastical Affairs as fully and as amply as himself or any of his Predecessors have or might have done the same; any thing in this Act notwithstanding."

In the spring of the following year both Houses of Parliament petitioned the king to issue a proclamation for the banishment of priests and Jesuits, and the enforcement of the laws against Recusants. The king again complied, making, however, this reservation: "But I suppose no man will wonder if I make a difference between those who have newly changed their religion and those that were bred up in that religion, and served my father and me faithfully in the late wars<sup>1</sup>." For an interval of nearly two years Parliament did not meet for the effective transaction of business. The king took this opportunity to publish his famous Declaration of Indulgence on March 15, 1672. It recites the king's desire to preserve the rights and interests of the Church, and the endeavours made to enforce uniformity by coercive measures, and proceeds, "But it being evident by the sad experience of twelve years that there is very little fruit in all these forcible courses, we think ourself obliged to make use of that supreme power in ecclesiastical matters, which is not only inherent in us, but hath been declared and recognized to be so by several statutes and acts of Parliament." The intention of maintaining the doctrine, discipline, and government of the Church of England "as now it stands established by law" is expressed, then follows this passage: "We do in the next place declare our will and pleasure to be, that the execution of all and all manner of penal laws in matters ecclesiastical,

<sup>1</sup> Cobbett's *Parl. Hist.*, vol. IV, p. 479.

against whatsoever sort of nonconformists or recusants, be immediately suspended." An intention of licensing places of public worship for such as do not conform to the Church of England is then announced, and "This, our indulgence, as to the allowance of the public places of worship and approbation of the teachers, shall extend to all sorts of nonconformists and recusants, except the recusants of the Roman Catholic religion, to whom we shall in no wise allow public places of worship, but only indulge them their share in the common exemption from the execution of the penal laws, and the exercise of their worship in their private houses only <sup>1</sup>."

According to Macaulay, of all the many unpopular steps taken by the government, the most unpopular was the publishing of this declaration; it was abhorrent to the enemies of religious freedom, and was thought by the upholders of civil liberty a violation of the constitution, and an unjustifiable exercise of the royal prerogative. The fact that it was at this very time that the Duke of York, the heir presumptive to the throne, ceased to outwardly conform to the established religion, and formally joined the Church of Rome, naturally created the impression that there was an intention to favour Papistry, and the Protestant dissenters felt no gratitude for any relief granted to them on such conditions. When at length the necessity of a supply to carry on the Dutch War forced Charles to reassemble his Parliament in February, 1673, he thus addressed them on this matter: "Some few days before I declared the war, I put forth my Declaration for Indulgence to Dissenters, and have hitherto found a good effect of it, by securing peace at home when I had war abroad. There is one part in it that has been subject to misconstructions, which is that concerning the Papists; as if more liberty were granted them than to the other Recusants, when it is plain there is less; for the others have public

<sup>1</sup> Cardwell's *Documentary Annals of the Church of England*, vol. II, pp. 333-7.



places allowed them, and I never intended that they should have any, but only have the freedom of religion in their own houses, without any concourse of others. And I could not grant them less than this, when I had extended so much more grace to others, most of them having been loyal, and in the service of me and of the king my father; and in the whole course of this indulgence, I do not intend that it shall in any way prejudice the Church, but I will support its rights and it in its full power. Having said thus I shall take it very ill to receive contradiction in what I have done. And I will deal plainly with you, I am resolved to stick to my Declaration<sup>1</sup>."

The question was speedily taken into consideration by the House of Commons, which, after a long and fierce debate, resolved by 168 votes to 116, "That Penal Statutes, in matters Ecclesiastical, cannot be suspended but by Act of Parliament"; and an address to that effect was ordered to be drawn up and presented to the king; a further debate took place on the proposal that the Lords should be invited to concur in the address, but it was rejected by 125 to 110 votes. The address was accordingly presented from the Lower House only. On February 24 the king returned his answer to the address, regretting "the questioning of his power in Ecclesiastics: which he finds not done in the reigns of any of his ancestors; his only design was to take off the penalties the statutes inflicted upon the Dissenters; and which, he believes, when well considered of, you yourselves would not wish executed according to the rigour and letter of the law"; he had no intention of avoiding the advice of Parliament, and if any Bill for these ends should be offered to him he would readily concur in it<sup>2</sup>. The answer was not satisfactory to the House because the claim to suspend penal statutes in matters ecclesiastical seemed to be still asserted, and it was resolved that a second address should be sent to the

<sup>1</sup> Cobbett's *Parl. Hist.*, vol. IV, p. 503.

<sup>2</sup> Cobbett's *Parl. Hist.*, vol. IV, p. 546.

king. On March 1 the king went down to the House of Lords and complained of the addresses he had received from the Commons, and requested advice thereon. The Lords in answer sent up an address to his majesty thanking him for "asserting the ancient just rights and privileges of the house of peers." On March 7 both houses joined in presenting an address against the growth of Popery, and on the following day the king came to the Parliament in person and agreed to the address; he also asked for supply to be dispatched, and added: "My Lords and Gentlemen; if there be any scruple remain with you concerning the suspension of penal laws, I here faithfully promise you, that what hath been done in that particular shall not for the future be drawn either into consequence or example." The same day the Lord Chancellor informed the House that his majesty had on the previous night caused the original Declaration under the great seal to be cancelled in his presence<sup>1</sup>. The thanks of both Houses were then returned to the king, and thus ended this incident which it has been thought right to relate at length on account of the light it throws on the spirit of the times as well as upon the question immediately before us.

Into the religious history of the remainder of the reign, inextricably bound up as it is with the course of politics, it is not necessary to enter at length; there was a perhaps not ill-founded suspicion that with an avowed Papist as successor to the crown attempts would be made to overthrow the established Church. In this state of feeling it was not unreasonable to take care that all places of trust and power should be filled by members of the dominant sect only. This was effected by the Test Act of 1673 (25 Car. II, c. 2), entitled "An Act for preventing dangers which may happen from Popish Recusants," by which all persons holding any office or place of Trust under the crown, whether civil or military, were compelled to publicly

<sup>1</sup> Cobbett's *Parl. Hist.*, vol. IV, pp. 551, 556-61.

receive the Sacrament according to the rites of the Church of England, and also to take the oath of Supremacy and sign a declaration against Transubstantiation. The penalty for executing any office without complying with these requirements was incapacity to hold any office or to prosecute legal proceedings or to act as guardian or executor, or to receive any legacy, and also the forfeiture of five hundred pounds, which could be recovered by any informer for his own benefit. It will be at once seen that this Act, though expressly directed against Papists, was equally applicable to sectaries of all denominations. This was followed five years later by the Parliamentary Test Act (30 Car. II, st. 2), entitled "An Act for the more effectual Preserving the King's Person and Government, by disabling Papists from sitting in either House of Parliament," by which for the first time Roman Catholic peers were excluded from taking their seats in the House of Lords. These last enactments are often defended upon the ground that in the then existing political circumstances it was necessary to strictly exclude Roman Catholics from all share in the government of the country; on the other hand, the Anglican party took care to exclude all Dissenters, whether Roman Catholics or not; and though measures were from time to time projected for giving relief to Protestant nonconformists, these were invariably brought forward at times such as the fag end of a session, when they had little chance of ever becoming law. This excuse, however applicable it may be thought to the Test Acts, can hardly be extended to cover a great part of the earlier legislation, such as the Conventicle and Five Mile Acts, or the frequent demands for the execution of the Elizabethan and Jacobean statutes against Recusants.

The contest over the Exclusion Bill, the proceedings against those charged with complicity in the Popish Plot, and the subsequent revenge of the court upon the leaders of the country party, did not concern the Jews, protected as they were by their insignificant numbers and exclusion

from all part in the political arena. To them, and the obscure formation of their community in these times of persecution and danger to all who dared to differ in the slightest degree from the religion as by law established and worship God according to the dictates of their conscience, it is now time to turn.

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*(To be continued.)*